

Mr. SESSIONS. I thank the gentleman not only for being here this evening but a chance to join the gentleman from Oregon and, of course, Texan here.

Mr. Speaker, tonight we've had an opportunity to talk about the Republican vision and how important the Republican vision is for a smaller, smarter, common sense government, versus a Democrat agenda, ineffective, wasteful and intrusive government.

I want to thank my colleagues for being here this evening. Mr. Speaker, we appreciate your time. We know that the people of the good State of Tennessee have sent you here to do the people's work, and that's what we're here to do, same also, for good public policy.

PROTECTING PEOPLE AGAINST DISCRIMINATION BASED ON THEIR SEXUAL ORIENTATION AND GENDER IDENTITY

The SPEAKER pro tempore (Mr. MAHONEY of Florida). Under the Speaker's announced policy of January 18, 2007, the gentleman from Massachusetts (Mr. FRANK) is recognized for 60 minutes as the designee of the majority leader.

Mr. FRANK of Massachusetts. Mr. Speaker, let me do what I think you cannot do under the rules and reassure your constituents in Florida that you have not become a Tennesseean when they weren't looking. I believe the gentleman from Tennessee left the chair, and we do now have the gentleman from Florida in the chair.

Mr. Speaker, I want to address today a very important issue that is generating an intense discussion among a fairly small segment of people who follow things, and it seems to us it's not healthy and that we ought to have a broader discussion, both of the specific issue, which is a question of how to protect people against discrimination based on their sexual orientation and at some point I would hope their gender and their gender identity, and also how do political parties relate to those in the population who are the most passionate, the most committed and the most legitimately zealous about their feelings, often on one particular issue to the exclusion of a broader set.

Before I came to Congress in 1981, former Members, the gentlewoman from New York (Ms. Abzug), gentleman from Massachusetts (Mr. Tsongas) and others, in the House filed legislation to make it illegal to discriminate against people in employment based on their sexual orientation; that is, they would have made it illegal in the same way that the 1964 Civil Rights Act made it illegal based on race, but in a different statute for a variety of reasons, for people to be fired, for people to refuse to hire people, for people to be denied promotions or in other ways discriminated against in the job based on their being gay or lesbian or bisexual. That was, and has been, the number one leg-

islative goal of gay and lesbian, bisexual people for more than 30 years.

In many States subsequent to that enactment, that introduction, laws were adopted to do that. Wisconsin was the first in 1982; Massachusetts, the State I represent, the second in 1989. Many States now have it.

As we kept that fight up in the face of a good deal of opposition and as we began to educate people as to why the prejudice against people based on our being gay or lesbian or bisexual was, in fact, invalid as a grounds for economic discrimination, movement expanded to cover people who are transgendered, people who were born into one sex physically but who strongly identify with the other sex and who, in fact, choose to live as members of the sex other than the one they were born in, often but not always having surgery to enhance that new life.

We are at a differential stage in public understanding of these issues. We've been dealing explicitly and increasingly openly with prejudice based on sexual orientation for almost 40 years, since the Stonewall Riots of 1969 and since then.

The millions of people that talk openly and to take on the prejudice against people who are transgendered is newer. It is also the case that prejudice begins with people reacting against those who are different from them in some way. People are rarely prejudiced against their clones. So we have this situation where there is more prejudice in this society today against people who are transgendered than against people who are gay and lesbian, partly because we have been working longer at dealing with the sex orientation prejudice; partly because the greater the difference, the greater the prejudice is to start, the more people fail to identify, the more they are put off by differences, especially when those differences come in matters of the greatest personal intimacy.

We should be clear that as we talk about matters of human sexuality or the human sexual characteristics we touch on the most sensitive subjects that human beings will deal with.

So where we are today is that earlier this year, after years of our introducing the bill which we call ENDA, the Employment Non-Discrimination Act, to ban discrimination in employment based on sexual orientation, we added this year for the first time a provision that would also have banned discrimination based on gender identity as we have designated it, i.e., against people who are transgendered.

We began dealing with the transgender issue earlier in the context of the hate crimes legislation, and legislating against hate crimes, it's easier to do than sexual orientation. It is less intrusive, and it is easier to make the argument that assaulting people and destroying their property is wrong than it is to say that refusing to hire them is wrong. I think they're both wrong, but obviously, there is a dis-

tinction in this society. One is a serious criminal issue; one becomes civil.

We originally encountered difficulty in broadening hate crimes to include people of transgender. I first talked about that in 1999. I remember having to explain to people what we were talking about.

Recently, we were successful earlier this, under the leadership of the Speaker of the House, in getting legislation through the House that expanded the hate crime protection, not just based on sexual orientation, but based on people being transgender. The Senate followed suit; although one of the leading senators engaged in that effort noted that whereas, when the Senate voted on that dealing solely with the sexual orientation issue, there were 12 Republican supporters, this year there were only eight. Eight turned out to be just enough to get us 60 votes to break a filibuster, but there was a fourth or one-third of Republican support even on hate crimes which is the easier one.

Despite that, we thought we were in a position this year, under the leadership of the Speaker who had committed early to myself and the gentlewoman from Wisconsin (Ms. BALDWIN), my colleague, to bring these issues up, hate crimes first and then employment non-discrimination, we thought we had the votes to pass it.

In fact, on September 5 of this year, when the gentleman from New Jersey (Mr. ANDREWS), a great supporter of opposing discrimination for all sorts, had a hearing in his subcommittee on the issue, I personally spoke more about the importance of including people who were transgendered than any other witness.

I know, Mr. Speaker, that there are today people who are unhappy with my position because I believe, to get to the central point here, that we have the votes to pass a bill today in the House that would ban discrimination in employment based on sexual orientation, but sadly, we don't yet have it on gender identity. And I differ with some as to what we do about that.

But one of the problems we have today, both on this issue, and as I will discuss in a little bit in general, is people in our society, the most deeply committed, who believe that when a politician tells them an unpleasant fact, he or she must somehow be embracing that fact. Because I have been one of those who has felt the obligation to tell my friends in the transgender community that prejudice against them is greater than prejudice against gay men and lesbians for some of the reasons I talked about, I have been asked why I am so opposed to fairness for people of transgender.

I will submit for the RECORD statements that I made officially, either in committee or on the floor, two in committee and one on the floor, in September 2004, when I said on the floor of the House: Yes, there are people who are transgendered in our society, and they are sadly often victimized.

They're often victims of violence. Yes, I think it is a good idea to come to their aid, and if the gentleman thinks it is a mistake to go to the aid of people who are transgendered, who are more often than others victimized or who were put in fear of that, then we do disagree. September of 2004.

September, 2005, again in the hate crimes context: I should add, too, that we've recently seen more of an outbreak of this sort of violence against people who are transgendered, and it is important for us to come to people's aid.

And on September 5 of this year, when I testified at that point in favor of a bill that I hope we would have the votes to pass only a month ago, that was fully inclusive, I said: And then we have the issue that my colleague so ably discussed of the transgendered, my colleague being the gentlewoman from Wisconsin who often talks about this.

I said: I understand this is a new issue for people. There are people who were born with the physical characteristics of one sex and strongly identify with the other. Some of them have a physical change. Some of them don't. Let me make a plea to all of my colleagues. These are people. Think what it must be like to be born with that set of feelings. Think what it must be like. Think what stress, what agony you go through to defy society's conventions to the extent where you make that kind of statement. This is something people are driven to do. Is there any reason why any of us should make those lives of those people more difficult than they already are? Obviously, these are people who are coping, and things are getting better. Things are better in ways. When I was young, a lot of things were difficult that are less difficult today. But we say here is, if someone has these feelings, if someone is born with one set of characteristics and strongly identifies the other way, should you fire them? Do you deny them a promotion? Do you say to them no matter how good your job is, you make me uneasy so out you go?

□ 2130

I spoke in hopes, on September 5, that we would have the support to do this. To my dismay, not entirely to my surprise but to my dismay, I found that we did not yet have the votes to pass a bill that would protect people who are transgender. As I said, I have discussed this issue, I think, as much as any Member of Congress and more than most. I am determined to try to diminish that prejudice, as I was determined when I started my political career to diminish the prejudice based on sexual orientation.

Let me add one point here. I am, myself, of course, gay, so when I talk about passing legislation against sexual orientation discrimination, it's fair for people to say, well, you think about yourself. But I first got elected to a legislature in 1972. In the intervening

35 years, I have worked very hard for legislation further banning discrimination based on race, discrimination based on ethnicity, based on gender to protect women, based on age to protect the elderly, based on disability.

At the time that I voted to protect people against those forms of discrimination, I was not, myself, a victim of any of them. I was not a beneficiary of banning discrimination against women or against African Americans or against Hispanics or people who were disabled. I was not when I voted for it one who was protected against discrimination based on age, but I now am, but I wasn't when I voted for it. I have just been around long enough to do that.

I reject the notion that somehow I have only been concerned with the category in which I am a member. I will say this, every time I voted for one of those, I was voting to protect one group of people and not another. Because at the time when we voted, that was all that we could do, that was all that we could get the votes for, because a fight against discrimination is an incremental fight. I wish it wasn't.

Some of my colleagues, some of my friends, I say to my colleagues in the gay community, maybe I will do a little stereotyping, maybe they have seen the Wizard of Oz too often. They seem to have Speaker PELOSI, a wonderful dedicated, committed supporter of human rights, confused with Glenda the good witch. They think if she waved her magic wand she could somehow change things.

I have seen this woman work as hard as it is humanly possible to do to achieve results, but there are limits to what any human being could do in the face of difficult reality. You can move reality, you can chip away at it, you can try to shape it, but you can't just wish it away.

What I have learned in the past month was that we weren't yet at the point where we could wish away this prejudice against people with transgender. Yes, we have an overwhelming majority of Democrats for that, but not all of them; and we have very few Republicans, although we have some of them. By the way, I wish this wasn't partisan. People said, don't make it partisan. I wish it wasn't partisan. I also wish I could eat more and not gain weight, and I wish I was as energetic today as I was when I was not protected with age discrimination.

But this is one of the central points. Denying reality not only doesn't change it; it makes it harder to overcome it. That's where we are.

On September 5, I testified in favor of including people of transgender. We then learned from conversations with our colleagues that we didn't have the votes to do it.

Let me say, and I love being in this House and many of my best friends are Members of Congress, but we are sometimes, those of us in elected office, loath to tell people the truth when it

will make them mad. We don't often lie directly, but we have ways of sounding more agreeable than we, in fact, are. We detect that in each other. We know when someone is being verbally more accommodating than he or she is likely to be when it comes time to vote.

I am afraid that some of my friends in the transgender community and the gay and lesbian community and the advocate community in general were misled by what we used to call in Massachusetts "the wink and the nod," the smile, the oh, of course, I strongly sympathize with you.

People thought we had the votes. I hoped we had the votes. I wasn't sure. We do not have the votes. That has been confirmed.

The majority whip, a man whose own life has been one of dedication to overcoming prejudice, did a check, not of every single Member on the Democrat side, but a large number of Members who were likely to be problematic. What we have found was, and I have confirmed this in my own conversations, here is where we are after years of advocacy on the sexual orientation question, a few years of advocacy on the transgender issue.

I am convinced that we have the votes to pass in this House a bill that has been the number one goal of the gay and lesbian and bisexual community and our allies for many years, a bill to ban discrimination based on employment. I think it will be an extraordinarily good thing for America if we are able to do that.

I don't expect the President to sign it, but it has always been the view of advocates, including my gay and lesbian colleagues, that we don't get deterred from pushing ahead by the threat of a veto. It's important to get those votes and to get people on record and show your strength so you can move forward and set the stage for an enactment in 2009. After all, I don't expect the President to sign the hate crimes bill; he says he won't, although he doesn't always remain unchanged.

But no one that I work with said let's not pass the hate crimes bill, transgender inclusive, by the way, because we aren't sure George Bush is going to sign it or we think he might veto it. You push ahead.

So this is the question we now face. I am convinced that the votes are there to pass a bill that bans discrimination based on sexual orientation in employment. I am also convinced that if we were to put up a bill that included people of transgender, that part would be stricken on a vote, and, unfortunately, a fairly heavy vote. Because what happens is when a tough issue, and the transgender issue is a tough political issue now, and if I have fought with colleagues, it is for not being honest enough with people. And people who would mislead you, I would say, Mr. Speaker, to those who come before us as advocates, people who would mislead

you and let you think your task is easier are not your friends. They are undercutting your ability. Underestimating your enemy is the surest way, not only to lose, but to lose so bad it is hard to come back.

I had hoped that we would have a vote upon a transgender-inclusive bill and win. Getting a large vote in this body to say no to transgender inclusion will make it harder in the future to change that situation, partly because my junior Senator, as the Presidential candidate, was unfairly pilloried. His remark was caricatured about his vote on Iraq. He quite sensibly voted for one version of funding for Iraq and then voted against another. He phrased it inartfully. What he did was correct.

But because of that, the fear that Members of this body have and of the other body of voting one way and then later changing has been magnified. People now pay an unduly high price if they change their mind. So if you go ahead and get a negative vote on the transgender issue today, that will make it harder for us at some point, and I hope that point comes within the next few years, to change things after we have done more education.

If we simply put the bill forward, and these become parliamentary intricacies, but they are irrelevant, if we simply put the bill forward and there was no amendment in the committee and it came to the floor of the House and it included the transgender inclusion, then you would see a series of very clever moves from the Republican side, motions to recommit, that could lead to the indefinite postponement in a repeated set of votes that would keep us from passing this bill.

Now, people have said to me, what's the message you send if you pass the bill banning sexual orientation and not transgender discrimination? Before I answer that question, I want to pose another.

What will be the message to this country who are not following all the intricacies of transgender inclusion? What will be the message that we will send if NANCY PELOSI, as strong an advocate of human rights for all people who has ever held high public office in the United States, if she is portrayed in the headlines as someone who says, I give up, we can't pass the gay rights bill this year.

If, after NANCY PELOSI ascends to the Speakership with her record of advocacy and after many of us, and I include myself in this, who have long been supporters of fairness, if we now are in a position of leadership in this House and we collectively say, sorry, you know that goal that you have had for over 30 years, that we have had, speaking for myself, of banning discrimination in employment based on sexual orientation? You know this message we wanted to send that it's wrong to do that all over the country? Not now, can't do it. Why can't we do it? Because we can't do it perfectly.

Now, the notion that you do not pass an antidiscrimination bill protecting

large numbers of people until you can protect everybody, in my judgment, is flawed, morally and politically. It is flawed morally because I am here to help people in need. That's why I serve in this job.

If we can get a sexual orientation ban enacted, we will be protecting millions of people in this country who live in States where there is no such law. There are laws in some States and not others. The States that have the laws are probably the place where prejudice is most active.

I do not accept the argument that I am somehow morally lacking if I say, you know what, I would like to protect everybody, gay, lesbian, bisexual and transgender. I am only at this point able to get a vote passed that protects the millions of people who are gay, lesbian and bisexual; but I will withhold from them that protection until I do anything. Because any time you insist on doing everything all at once, you will do nothing.

I think my favorite way to look at American history is to look at some of those wonderful principles that were set forth in the Constitution of United States, extraordinary declarations of basic human rights at a time when those were really quite unrealized in the world.

But as people pointed out, Thurgood Marshall most eloquently, there was a great gap between those wonderful universal principles, the rights of all, and the practice. Yes, everybody had rights on the paper, and rich white Christian men had rights in reality.

What we have seen over 200-plus years, in my judgment, is successive efforts to take those marvelous principles of freedom and equality and democracy and fairness that were set forward in the Constitution, Declaration of Independence and apply them to more and more people, to diminish the exclusion. We have done it on race, we have done it on gender, we have done it in a number of other areas.

The last remaining barrier is sexual orientation and people who are transgender. We cannot do it, I believe, all at once. I have tried, and I will say that I have tried as hard, I quoted several statements I made. I will say this as an aside, I will get to this later, that one of the things that does bother me, to be honest, is that people who are now demanding that we kill a bill to protect people against sexual orientation and discrimination because we haven't done enough to protect people of transgender were silent on the issue awhile ago.

When I testified on September 5, I wasn't the head of some large movement. I was speaking out personally. I had been begging people for months. We knew this was coming up. It has been published since earlier this year that we would be voting on this bill now.

People are now having Web sites; people are bursting forward. Where were they when we needed them? I will

talk about why we did not see them then and we see them now.

But the moral issue is, do you deny protection to millions of people because you can't give it to millions plus several hundred thousands? It's not the numbers that counted. More is always better; and, again, the notion that we shouldn't have helped blacks until we could help women, as somebody pointed out in an editorial, I think it was in the Washington Blade, constitutionally black men got the vote long before white women.

Now, I wish everybody had gotten the vote back at that time. There were suffragettes back then, but wouldn't it be fair to say we are not giving anybody the additional right to vote until everybody can? That's the issue. There are people who can test this and say, oh, if you had really tried, you could have gotten the vote.

They are simply wrong. I will tell them that I and many others, Speaker PELOSI and many others, have tried very hard to get those votes. They weren't there.

It's partly because some of the people who are now lately to this fight weren't there helping us through the lobbying. But even if they were, we probably wouldn't be there yet because we have been later to this game, and we have a deeper hole to fill. I believe we will get it done.

Now, there is one argument, let me actually hit two arguments, that people will say as to why we shouldn't go ahead now. One, they say, well, you know what, it's strategic. The President is not going to sign the bill anyway. Why go ahead with sexual orientation now without transgender?

But that argument is not being made honestly, because the argument is not that we shouldn't go ahead and pass the bill that George Bush would veto. The position taken by the various groups that want us to kill the gay rights bill now, because we do not have the votes to include transgender, are people who say to us, never pass the bill, even if you get a Democratic President who would sign it in 2009, and you get a House and Senate majority ready to pass it in early 2009, do not protect millions of people in this country against discrimination based on sexual orientation until you can protect everybody now unprotected.

I don't think that's morally a valid position, but let's be fair. It's not a tactical issue about whether you do it now or then. It's do you ever do it.

One other argument we get is, well, if you pass a sexual orientation, anti-discrimination law, you won't be protecting even gay and lesbian people, because people will then be able to fire gay men on the grounds that they are effeminate, not that they are gay. They will fire lesbians for being too masculine and that will take away the protection.

In fact, many States in this country still have laws that protect only against sexual orientation, including

New York State, which passed it a few years ago with the strong support of many of the people who now tell us that Congress dare not do what New York did. How people think we are going to get more votes, we are going to get more votes for a better bill in America than they got only in New York. I don't understand, if they really think that the United States is a more favorable theater for these kinds of rights than New York.

But I have challenged people to give me one case in which in a State which protects only against sexual orientation, and most States had that originally and it was that way in many States for a while and it's still that way in a lot of other States, is there one case where a person was fired because of her sexual orientation, and that firing was upheld in the teeth of the law that said you couldn't do that because she was too masculine?

□ 2145

There are no such cases.

And I asked Lambda Legal which may decide to give me a case. They have the one case that they allude to. They don't give the citation often because it is so clearly not supportive of that position. It's Dawson against Bumble & Bumble. No, that was not out of Dickens. Dawson against Bumble & Bumble is a case from the State of New York. Its cite is 398 F.3d 211. And what the three-judge panel says here affirming a district court judge is very simple. The woman who brought the claim wasn't able to show that she was discriminated against on any ground. In fact, the argument was, you know, you didn't have transgender protection in the New York State law; that's why she was fired. It was mostly a case about title 7 of the federal law, which doesn't even mention sexual orientation, and much of the case comes up with her trying to get sexual orientation into it. But in fact, as the judges point out, let me read what the three-judge court said, and this is a claim from Lambda Legal, that this shows that you could fire a lesbian on the grounds of her being too mannish because she didn't have gender identity protection. Listen to who fired her. The district court found it to be particularly significant that Connie Voines, the manager of the salon and the individual who ultimately decided to terminate Dawson, is a "presurgery male to female transsexual who, at the time of the events in question, was transitioning from appearing male to appearing female." She was fired by a transsexual. How in the world would having sexual gender identification protection have kept her from being fired by a transsexual? She was fired because she was a lousy haircutter. I don't say that negatively about her. I'd be a pretty lousy haircutter. But that's why she was fired. Dawson's performance was erratic. Sometimes she performed well, other times she did not. Over time, her performance and the

educational program declined until it was unacceptable.

Now, she does say with regard to New York State law, the Federal law doesn't even have sexual orientation in it, so it's totally irrelevant. Under New York State law, which has only sexual orientation, she did say that, yes, it was a problem because a couple of people had made remarks to her about being a dyke. You know what the Court found? That they didn't fire her; that the people who insulted her had no power to fire anybody. She was fired, this woman, in a place that was about 50 percent gay and lesbian, by the way. The notion that this was a pretext for getting rid of gays and lesbians, it was a hair salon. This wasn't the backfield of the New York Jets. It was a place where most, half the people were themselves openly gay and lesbian, and she was fired by a transsexual. And they say that this shows that a sexual orientation law doesn't mean anything.

It's sad to see a legal organization for which I have respect making that kind of an argument because what they're doing is they are loading the gun against us. Because I will tell you this: If in a future case, anybody fired a gay man and said "Well, I didn't fire him because he was gay; I just fired him because he was too effeminate" in a State which had a sexual orientation law, if someone tried to cite this case as an argument for firing that person, Lambda Legal would say "Of course not; you've misread it." Please don't distort the case now for rhetorical purposes when you may be putting this weapon in. Fortunately, this case is so completely off the point, a woman was fired for being a bad haircutter by a transsexual, and we're told, "Oh, if there was only gender identification protection, this wouldn't have happened." That's not good argument. What people really believe is, and it's not tactical. He's not going to sign it. It is not this principle. Do not pass a law that protects some people until you can protect everybody. Now that's a valid argument. I think it is terribly wrong. I also believe, by the way, from the standpoint of protecting people who are transgender, and as I've said I've listed my comments in favor of inclusion of people who are transgendered. I think I've got as good a record on this as others. And by the way, in listing what I've done on behalf of helping transgender people win, I will cite some of the arguments that people have taken issue with because I have told them how hard it's going to be. Yeah. A lot of people have been yes-sing people to death. And a lot of people, both in the gay and lesbian community and the broader advocacy community, and here in the Congress, people don't like to say no to people. You know, we Caucasians get all ethnocentric. We impute to people of Asian descent an unwillingness to be unpleasant face to face. Most people don't like to be unpleasant face to face. Most people tend to shade things. They tend to,

you know, one of the things you learn here if you're in the whip organization, if you're counting, please discount by a very significant percentage what people say to you because that's a natural human tendency.

And I remember once when I was in high school reading, the New York Times had an article about a Member from the Midwest who was very angry at a New York Member of Congress. He said, you know, "You told me you were going to vote with me and you didn't. You broke your word to me." And he said, "What do you mean? I never told you that." And he said, "Well, I asked you if you were going to vote with me and you said, 'Yeah, yeah.'" And the guy said, "Don't you know that in New York 'yeah, yeah' means no?" I mean, often that's where we are. That's the issue.

So again, there is a central issue here. Do you withhold protection from millions of people who live in States where they are now unprotected from discrimination based on sexual orientation? We had the case of a lesbian who was fired by Cracker Barrel who was a lesbian in the State of Georgia. They don't have a law. I think that's the morally flawed position. I reject the notion that when I want to extend protection to millions of people. And I want to go back. Am I protecting myself? Not anymore. Sure, there was a time when I was vulnerable. I'm now chairman of the Financial Services Committee. I really am very unlikely to be discriminated against. This is not a personal thing with me. But I remember what it was like to be young and gay and worried about the job. I know what it's like today when I talk to young people who are afraid, not in Massachusetts, not in California, not in Wisconsin, not in a lot of the States that have the law, but in many States that don't have the law there are people who are afraid. And again, we are being told by a very strongly motivated group, and it's not don't do it now because he's going to veto it. It's not don't do it for tactical reasons. It is very clear in what they say. Never pass a law that will protect people against discrimination because they are gay or lesbian or bisexual in their employment unless you pass a law that covers people who are transgender as well. My view is that we should try very hard to extend it to people who are transgender. I want to do that. But if I can't do everything, I don't want to be told to do nothing, because that is a way never to do anything.

And by the way, even Martin Luther King understood that. In 1964, the Civil Rights Act covers race, but it didn't cover all subjects. It didn't cover housing, didn't cover voting rights. And we've had people who said don't pass ENDA. It doesn't include everything, doesn't include housing, etc., etc. Well, neither did the 1964 Civil Rights Act. When we voted to protect people in the American Disabilities Act, we, in fact, protected people who had AIDS and

people who are HIV positive. But we didn't protect people who weren't. That was a distinction among gay men. If you can show me that by helping some people I am making other people worse, then I won't go forward.

But there's a great concept in economics, there used to be. Maybe they changed it. They changed a lot of things since I studied it. It was called pareto optimality. Pareto Optimality meant, named for the sociologist Vilfredo Pareto, pareto optimality recognized, being sensible people, that you can never make everything better at once. Pareto optimality is if you make some things better and nothing worse. And that, by the way, is considered an unattainable ideal in economics. To be able to make some things better and nothing worse is unattainable. To make everything better and leave nothing behind is unthinkable. It's beyond unattainable. And I think we are at pareto optimality when we say to millions of gay men and lesbians, blue-collar workers, young people, other people who live in the majority of American States where they're not now protected against discrimination, we will protect you. And I wish we could protect people who're transgender.

And by the way, from my standpoint, there are three options now. We could go forward with the bill that included people with transgender. That would lose. I am convinced it would lose. We've looked and worked hard on this. And I'm someone who's been an advocate. The Speaker's been an advocate. Chairman MILLER, the gentleman from California, the Chair of the Committee on Education and Labor, the gentleman from New Jersey (Mr. ANDREWS), advocates who said they were trying. We don't have the votes for it. It is not, in my judgment, in the interest of succeeding ultimately and including people who are transgender in this protection to have them lose by 50 or 60 votes today. And I started to say this before. What will happen is this: They will lose. We know that. And once they've lost, people who were ready to support them will say, you know what, they're losing anyway. I think I'd better not vote for them, because what's the point of taking a hit when it's not going to be of any use.

So we could go forward with the vote and have them lose and maybe lose the whole bill because of procedural maneuvering, or we could let the whole bill die and people say what message are you sending the country if you protect against sexual orientation and not transgender? Well, my view is the message we are sending is we are at a point in our fight against prejudice where we have made these gains but not those gains, and we will consolidate the gains we made and move forward.

And the alternative is, the Democrats took over the House and they have the Speaker from San Francisco and they've got a chairman who's gay and they've got all these other people

who tell gay and lesbian people they're friends, and they couldn't even pass a bill to protect people. What message does that send to gay and lesbian people in all those States who are not now protected? So I think we should go forward. Do the best we can.

Now, I said we're going to lose. I hope I'm wrong. After we did our count and found that we didn't have the votes, all of a sudden, the cavalry mounted up. But they're coming from a long distance. I have been pleading with people in the gay and lesbian and bisexual and transgender communities to lobby for us. Instead, they want to strategize, many of them. Some, no. Some have done a very good job. But many of them weren't there. And now they have announced, in the last couple of weeks, and they asked for a postponement. The Speaker correctly said sure, take a couple of weeks. It's hard to do that in a couple of weeks. Maybe they can turn it around. I will say this, Mr. Speaker, if at some point it looks like our count is turned around, I don't expect it to, but I hope it does, and we have the votes to include transgender, I'll be for that vote being taken. But I doubt very much that people will be able to undo months and years of inaction and of talking only to each other and not doing the hard lobbying within a couple of weeks.

So I will say this. If a week from now we've reached a point after this delay that was granted to advocacy groups where we have, as we did before, have the votes to protect millions of currently unprotected people against a form of job discrimination, but not everybody who's being discriminated against, then I say it's immoral not to go forward. And again, I understand that we may not get the bill passed this year. But I understand also that what we're debating this year is a proxy for when we do have the votes to get this passed, because we will be told whenever we are in this situation, and I don't think we're going to turn this around in a year. I wish we could. But if we have a President ready to sign the bill and a majority ready to pass it, we will again be told, no, you may not. You may not protect millions of people against discrimination because they're gay or lesbian or bisexual until you can also protect people with transgender. I have to say to my transgender friends, why would you want to say that? Why would you want to say until you can protect me, don't protect anybody else? I've never said that. I never said don't protect people against racism until you can protect me against homophobia. Don't protect some people against ethnic discrimination until you can protect other people because they're lesbians. That's just not the way we'll get there. We have got to get there working together.

And in fact, the best way to improve is this, there are irrational fears about what will happen if we pass a bill protecting against sexual orientation. You know what's odd? There are people who

think the real fight in this world is whether or not we can include transgender. They kind of take for granted that we can pass sexual orientation. The fact that we are on the verge of passing a bill to protect people against discrimination based on sexual orientation is a wonderful breakthrough in this country. We've been fighting for it for over 30 years. A year ago, when we were trying to fend off a right-wing effort to ban same-sex marriage in Massachusetts and retroactively cancel the marriages of thousands of people, I don't think people were confident that we would be on the verge of passing a sexual orientation antidiscrimination bill. That's a wonderful moment as we make advance after advance in civil rights. And I will not allow people without my dissenting to turn that great breakthrough into some mark of weakness.

It's a great thing to be able to go forward, and it's also the prerequisite for going even beyond that, because if we are able to establish in 2009 anti-discrimination protections based on sexual orientation, within a year we will have alleviated many of the fears. We always have excessive fears about antidiscrimination. People always think antidiscrimination measures will cause chaos when they don't. And once we have done that, it will be easier to add people who are transgender rather than to say we're never going to do anything until we can do everything. That is not the way legislation has ever worked. That is not the way social advance has ever worked.

Now the question then is, and I think this is worth pondering in my closing minutes here. How did we get to the point, we certainly weren't there a year ago, where an announcement by a Speaker who has spent so much of her life fighting against prejudice, her announcement that she will bring to the floor a bill in which we will get a majority in the United States House of Representatives which would ban in the entire country discrimination based on sexual orientation, how did that get transmogrified in the minds of I believe only a few people, but a few very vigorous people? How did that become a bad thing? How did one of the great advances in civil rights protection since the Civil Rights Act of 1964 get labeled as somehow a sellout? And here's the problem. And it is a problem both parties face, and in some ways, this issue, do we go forward with a bill achieving a decades-long goal of for the first time getting either House to vote to ban sexual orientation discrimination, something gay and lesbian people have been fighting for a long time? And I do suspect there are some people who it's precisely because we're on the verge of victory that they decided they better not think it's such a good idea, because they are vested in the notion that we'll never win and that we must always be fighting.

□ 2200

But how do we reach the point where this is a negative in the minds of some? Well, here is the problem, and it is a problem, as I said, for both parties. It is how do you relate, those of us who hold positions of responsibility who have been elected by broad majorities and given a responsibility to govern, to govern in pursuit of our values? I'm not here as some neutral administrator. I am here because I have a set of values. I have a set of views about what I want this society to look like. And I'm here to try to move this society in that direction. And I do that as part of a broad coalition, and included in that coalition are some people who are fiercely motivated.

Now, this is the issue: Does a political party say to its most militant, committed, ideologically driven believers in purity that they have a veto over what the party does? And I say that procedurally because substantively I agree with them. I have spoken on this floor and in committee for including people of transgender. I have argued that with my colleagues in private. I have argued that with the Democratic Caucus. But I also believe that I have a broader set of responsibilities than to any one group and my job is to advance the moral values that I came here to advance as far and as fast as I can and not voluntarily to withhold an advance because it doesn't meet somebody's view of perfection. And the question is, how do we relate to those people? And it has become an increasing problem for both parties.

Frankly, until recently I have felt that one of the advantages we Democrats have had over our Republican colleagues is that we were more willing to be responsible, less susceptible to the most committed minority of our party having a veto. I think from the days of Terri Schiavo and before and since, the Republican Party has suffered from that. I don't want the Democratic Party to suffer from it. Not because I want to protect the Democratic Party as an end in itself, but because the Democratic Party is the means by which these values I care about are most likely to be advanced.

And let me talk about this ideological faction that we have. There are some characteristics that they have that I think led them to this profoundly mistaken view that the greatest single advance we can make in civil rights in many, many years would somehow be a bad thing because it would only include millions of people and leave some hundreds of thousands out. And I want to include those hundreds of thousands. I have done more to try to include them than many of the people who say we should kill the whole thing, but I don't understand how killing the whole thing advances that.

But here are some of the characteristics: first of all, they tend to talk excessively to each other. One of the things when you are in this body is you

talk to people all over the country. You talk to Members of Congress from every State. And I have this with people who can't understand why I am not introducing legislation to impeach the President and the Vice President, and I find that this is a characteristic that these are people who do not know what the majority thinks, who do not understand the depths of disagreement with their positions on some issues. And that doesn't mean a majority that says George Bush is wonderful. That isn't there anymore, but a majority who would be skeptical of impeachment.

But let me get back to this. There are people who talk excessively to each other. They don't know people of other views.

There is another characteristic of these people who are so dedicated. They do not have allies. You can take an elected official who has been with one of these groups day after day for years, but let that individual once disagree, and it's a betrayal. It's a failure of moral will. And lest anyone think I am here being defensive about myself, let me be very clear: I will be running for reelection again. The likelihood that I will be defeated by someone who claims that I am insufficiently dedicated to protecting people from discrimination based on sexual orientation seems to me quite slender. I am not worried about my own situation, and let me also say that I have said that my colleagues suffer sometimes from the unwillingness to tell people bad news. It has been suggested that I may suffer from the opposite direction. It's not that I like telling people bad news, but I do think that you should when you have to.

I am not worried about myself, but here is what I'm worried about: I am worried about people from more vulnerable districts because not only do people talk only to themselves and not understand the differences that exist and not accept anybody's bona fides ever, that they will turn on anybody the first time there is an honest disagreement, but there is also the single-issue nature. That is, there are people who say, okay, you know what, I don't care about your survival to fight for any other issue.

Let me put it this way: there are people who say to me, wait a minute, when you say you don't want to take a vote on transgender because it might lose and it would be politically difficult, you are letting politics enter into it. Let me make a very blanket statement here in the first place for those who want to live in America or France or England or anywhere else. If you want a decision to be made without any regard to politics, do not ask 535 politicians to make it. That's called democracy when you like it; it's called politics when you don't.

But here is the issue: there are people in this Chamber who come from districts much tougher to win in than mine, districts which I could never have won. And I treasure their being

here because they help us on the children's health program, on raising the minimum wage, on defending civil liberties and fighting racism, and, hopefully, in getting us out of the war in Iraq. Yes, I do take into account the likelihood that my colleagues with whom I agree on so many issues might be jeopardized in a fight that we are going to lose anyway.

And, by the way, I say to my gay and lesbian friends, there are people here who voted with us against a constitutional amendment that would have retroactively wiped out marriages in Massachusetts. They are ready to vote with us to get rid of the ban on gays in the military when we get a President who will sign that. They voted with us on hate crimes. They are ready to vote with us to ban discrimination based on sexual orientation, which we have cared about for so long. They are ready to do other things that will be helpful to us.

I will not abide by people telling me that I have to totally disregard my interest in their continuing to be here on every single issue, and that's the problem with the single issue. You are willing to disregard progress on any other issue. So to demand 100 percent on the one issue and to scorn people giving 90 percent and to say I don't care whether they win or lose when they are with us on so many other issues, that is irresponsibility.

And I say this is a moment of truth for the Democratic Party. I wish it weren't the case. I apologize to my colleagues. It is awkward for me here. I have been pressing people for years. And, again, I want to stress a bill that bans discrimination and employment based on sexual orientation will be, I believe, the biggest single advance in fighting prejudice in many years, certainly since the American Disabilities Act; maybe since, in numbers, the Civil Rights Act of 1964. And I know that is a tough vote for some people to cast. And I have got people saying, I don't care if it's a tough vote to cast. If they are not also willing to do it for transgender, then they are my enemy and I don't want it to go forward.

I am sure of this, Mr. Speaker: I have been here 27 years, and the longer I get here, the less I know about everything else than what is here. My mind is not expansive enough to do much when the day is over. So I think I know a lot about this place and increasingly little about everything else. What I am sure about this place is this: if we listen to the most dedicated, most zealous believers in purity and kill this bill that would be such a great advance in civil rights, we will be a long time in getting back to anything. People who think that if they are successful in killing this one and in attacking people and demonizing people who want to deliver, as part of a movement, this big advance that they will then be able to get more than that live in Oz, in not only a fantasy world but a nonexistent fantasy world and a dream. It simply will not happen.

Let me close, Mr. Speaker. I am a great believer in free speech. I often am one of only two or three Members voting against telling people they can't read this or say that or look at such and such on the Internet. If I was inclined to ban forms of expression, it wouldn't have much to do with sex. I would make it a misdemeanor to use pragmatism and idealism as if they were opposing views. And that's what we have here. People say, well, you're going to be pragmatic and pass a bill that protects millions of people against discrimination based on sexual orientation, but, me, I am an idealist. I am for no bill at all because if I can't protect everybody, I don't want to protect anybody.

Let me put it to you this way, Mr. Speaker: of course you should start with ideals. You don't belong in this line of work making rules that other people have to abide by unless you are motivated by a genuine idealism about how the world should be. But the more committed you are to your ideals, the more you are morally obligated to be pragmatic about achieving them. What good are your ideals if they're never achieved and all they do is make you feel pure?

If we kill the gay rights bill this year and set back for some time to come the possibility of going after any of these forms of discrimination, there will be people who will be very proud of themselves. See, I didn't let those politicians compromise. I didn't let those politicians settle not for half a loaf but for about 85, 90 percent of a loaf. I insisted on absolute solidarity and absolute purity, and I feel much better about it.

And they probably will. But millions of people will be worse off because they will have been denied by this preference for purity a real legal protection.

Mr. Speaker, I filed a bill in 1972, in December, and my former colleague Jim Segel here who was with me as one of the few supporters of that, and we pushed for that. My colleague, the gentleman from Massachusetts (Mr. MARKEY), was one as well. We pushed for that. For 35 years I have been trying very hard to protect people against discrimination, and the people who are the victims of discrimination, they tend to be the most vulnerable people in places where there is the most hostility. And we are on the verge in winning in the House of Representatives an extraordinary historic victory, the passage of a bill banning discrimination based on sexual orientation. And people say don't do that because you can't protect everybody.

I should add, Mr. Speaker, I talk a lot to gay people, gay men and lesbians. I find the view that we should not do anything until we can do everything very much in the minority. I understand the passion of those who are in organizational positions. But, you know, we talk about politics here. There are politics in organizations too.

There are people who I have privately discussed this with who have said, yes, we wish you would go ahead, but I can't say that. I can't stand up against this organizational consensus.

Well, idealism by itself is going to be pretty fruitless, and idealism that is empowered by pragmatism is the way in which we make progress, and that is what we are called upon to do here. And so I am asking my colleagues, Democratic and Republican because there is bipartisan support for this, please do not be dissuaded by those who say do nothing until you can do everything. Look at the history of civil rights. Look at the fact that we helped one group here, we dealt with a certain form of discrimination there.

Even here, by the way, we are talking about employment discrimination. We are not talking about marriage here. There was an effort to try to put civil unions and partner benefits in the bill. It was a mistake. We'd get rid of it or it would kill the whole bill.

I do not believe that the majority of gay men and lesbians in this country want to take the position that nothing shall be done to enhance legal protection against the prejudice from which they suffer until we can do the job perfectly. I also believe that from the standpoint of including people who are transgender, for which I have and will continue to work, we will not accomplish that nearly as quickly. Maybe in 50 years it will all get done. I'll be dead; so tell me anything. I won't be able to argue with you.

But in the interim, we will get there much more quickly if we continue to follow the sensible strategy of working with allies, of accepting support that is overwhelming but not complete, of understanding political reality, of moving forward, of alleviating some fears by taking some partial steps. We are a lot likelier to get there.

So we have two choices today: we can say until we are able to do everything, we are going to abandon this effort; and I believe the consequences of that will be profoundly negative for any effort to revive this. People will say, wait a minute, those are the people who tell me not to do that. God knows what they're going to ask me for the next time. For 30 years they told me they wanted this. Now when I want to give them this, no, that's not good enough. They want that. I can't go through this again.

□ 2215

Or, we can take one of the biggest steps forward in the anti-discrimination march, in the march to make the American Constitution's wonderful principles fully applicable with everybody, we can take a major step forward on that issue. And having done that, we will be, in my judgment, better able to take the next step. That is the choice. And I hope, both for the substance, and for giving people a lesson in responsible governance in defense and in advancement of our values, my col-

leagues, especially on this side, but in the whole House, will opt for sensible and real progress that serves the interests of the majority and rejects the counsel of those who say that, absent perfection, we should leave everything as it was.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Ms. BEAN (at the request of Mr. HOYER) for today and October 10.

Ms. BORDALLO (at the request of Mr. HOYER) for today and until 3 p.m. on October 10 on account of official business in the district.

Mr. HODES (at the request of Mr. HOYER) for today on account of travel problems.

Ms. EDDIE BERNICE JOHNSON of Texas (at the request of Mr. HOYER) for today and October 10 on account of a family emergency.

Mr. GARY G. MILLER of California (at the request of Mr. BOEHNER) for today and October 10 on account of illness.

Mr. REICHERT (at the request of Mr. BOEHNER) for today and October 10 on account of personal reasons.

Mr. WAMP (at the request of Mr. BOEHNER) for today on account of a family commitment.

Mr. GINGREY (at the request of Mr. BOEHNER) for today on account of attending a funeral.

Mr. KNOLLENBERG (at the request of Mr. BOEHNER) for today on account of personal reasons.

Mr. LUCAS (at the request of Mr. BOEHNER) for today on account of family health reasons.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Ms. WOOLSEY) to revise and extend their remarks and include extraneous material:)

Ms. WOOLSEY, for 5 minutes, today.

Mr. CUMMINGS, for 5 minutes, today.

Mr. DEFAZIO, for 5 minutes, today.

Mr. MEEK of Florida, for 5 minutes, today.

(The following Members (at the request of Ms. FOXX) to revise and extend their remarks and include extraneous material:)

Mr. POE, for 5 minutes, October 15 and 16.

Mr. FRANKS of Arizona, for 5 minutes, today.

Mr. BURTON of Indiana, for 5 minutes, today and October 10.

Mr. JONES of North Carolina, for 5 minutes, October 15 and 16.

Ms. FOXX, for 5 minutes, today.

(The following Members (at their own request) to revise and extend their remarks and include extraneous material:)

Ms. JACKSON-LEE of Texas, for 5 minutes, today.

Mr. KAGEN, for 5 minutes, today.